

### REMARKS

Applicant has reviewed the Office Action mailed on March 31, 2003 as well as the art cited. Claims 31-40 are pending in this application. Claims 1-30 have been withdrawn from consideration.

#### Affirmation of Election

As provisionally elected by Applicant's representative, Scott Lundberg on March 18, 2003, Applicant elects to prosecute the invention of Group III, Claims 31-40.

#### Rejections Under 35 U.S.C. § 112

Claims 32, 33, 39 and 40 were rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make/or use the invention. In particular, the Examiner stated:

The limitation of testing the backup CMTS transceiver during the first operational mode in claims 32, 33, 39 and 40 is not described in the specification. In fact, the specification discloses paragraphs [0036] at page 10 and paragraph [0043] at page 12. These paragraphs only disclose testing a backup CMTS transceiver without interrupting a primary CMTS transceiver and switching to the backup CMTS transceiver when the primary CMTS transceiver failed. There is no disclosure of testing the backup CMTS transceiver during the first operational mode.

Applicant has amended claims 32, 33, 39 and 40 to reflect that which is explicitly described in the Summary and Detailed Description portions of the Specification pursuant to the Examiners request. Accordingly, Applicant respectfully requests the withdrawal of the rejection of Claims 32, 33, 39 and 40 under 35 U.S.C. §112, second paragraph.

Claims 35-40 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the examiner stated:

The term of a single directional coupler is defined at lines 6-7 of claim 35, meanwhile the term of a plurality of directional coupler is recited at line 13 of claim 35. Thus, the term “the directional couplers” at line 13 is indefinite.

Applicant respectfully traverses the Examiner’s rejection of Claims 35-40 under 35 U.S.C. §112, second paragraph. Claim 35 includes the element, “a directional coupler is connected between each upstream communication port and the subscriber equipment and between each downstream communication port and the head end.” As written, this element describes a plurality of directional couplers, i.e. “a directional coupler is connected between **each** upstream communication port and the subscriber equipment” and “between **each** downstream communication port and the head end.” Examples of embodiments illustrating this can be seen in Figure 2, 4A and 5A. Thus, the terms “the directional couplers” at line 13 is not indefinite. Accordingly, Applicant requests the withdrawal of the rejection of claims 35-40 under 35 U.S.C. §112, second paragraph.

*Rejections Under 35 U.S.C. § 103*

Claims 31-35, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unger et al. (US 6,230,326 B1). To establish a *prima facie* case of obviousness under 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143.

Claim 31

Applicant respectfully traverses the rejection of independent Claim 31 under 35 U.S.C. 103(a). The Unger et al. reference does not teach or suggest each element of Claim 31. For

example, Claim 31 includes the element “passing communications through a directional coupler.” The Unger et al. reference does not teach or suggest “passing communications through a directional coupler,” as is disclosed and claimed in Claim 31 of the present application. Referring to Figure 3 and column 3, line 66 through column 5, line 19 of the Unger et al. reference, the Unger et al. reference uses switches. Problems associated with using switches in the prior art is discussed in the background section of the present application in paragraph [0005]. As discussed, the present invention overcomes the problems associated with switches with the use of directional couplers. The Unger et al. reference teaches away from “passing communications through a directional coupler” by using switches. Since the Unger et al. reference does not teach or suggest “passing communications through a directional coupler,” a prima facie showing of obviousness has not been shown. Accordingly, Applicant respectfully request the withdrawal of the rejection of Claim 31 under 35 U.S.C. 103(a).

Moreover, since dependant claims 32-34 depend from and further define patentably distinct Claim 31, Applicant respectfully requests the withdrawal of the rejection of dependant Claims 32-34. Since, Applicant believes the dependant claims are allowable for the above stated reason, further rejections have not been addressed in this response. However, the Applicant retains the right to address said further rejections if a further response is necessary.

#### Claim 35

Applicant respectfully traverses the rejection of Claim 35 under 35 U.S.C. 103(a). The Unger et al. reference does not teach or suggest each element of Claim 35. For example, Claim 35 includes the element “wherein a directional coupler is connected between each upstream communication port and the subscriber equipment and between each downstream communication port and the head end.” The Unger et al. reference does not teach or suggest “wherein a directional coupler is connected between each upstream communication port and the subscriber equipment and between each downstream communication port and the head end,” as is disclosed and claimed in Claim 35 of the present application. Referring to Figure 3 and column 3, line 66 through column 5, line 19 of the Unger et al. reference, uses switches. Problems associated with

using switches in the prior art is discussed in the background section of the present application in paragraph [0005]. As discussed in the present application, the present invention overcomes the problems of using switches. The Unger et al. reference teaches away from “wherein a directional coupler is connected between each upstream communication port and the subscriber equipment and between each downstream communication port and the head end,” by using switches. Since the Unger et al. reference does not teach or suggest “wherein a directional coupler is connected between each upstream communication port and the subscriber equipment and between each downstream communication port and the head end,” a prima facie showing of obviousness has not been shown. Accordingly, Applicant respectfully request the withdrawal of the rejection of Claim 35 under 35 U.S.C. 103(a).

Moreover, since dependant claims 36-40 depend from and further define patentably distinct claim 35, Applicant respectfully requests the withdrawal of the rejection of dependant Claims 36-40. Since, Applicant believes the dependant claims are allowable for the above stated reason, further rejections have not been addressed in this response. However, the Applicant retains the right to address said further rejections if a further response is necessary.

Serial No.: 09/995,167

Filing Date: November 26, 2001

Attorney Docket No. 100.361US01

Title: PASSIVE CMTS REDUNDANCY

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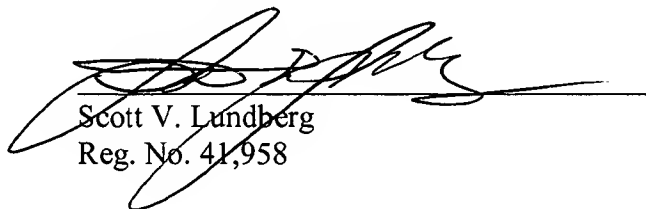
**CONCLUSION**

Applicant respectfully submits that claims 31-40 are in condition for allowance and notification to that effect is earnestly requested. If necessary, please charge any additional fees or credit overpayments to Deposit Account No. 502432.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 332-4720.

Respectfully submitted,

Date: 6-27-03

  
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